

Office of the Secretary of Defense

§ 145.5

(2) Investigating and reporting on allegations of improper or illegal conduct forwarded to the Component by the OSC pursuant to 5 U.S.C. 1206(b) (2) or (3).

(3) Facilitating orderly investigation by the OSC of alleged prohibited personnel practices and other matters assigned for investigation to the OSC by law, such as the Freedom of Information Act and the Hatch Act.

(d) DoD Components shall cooperate with the OSC by providing appropriate assistance and information to its representatives during their investigations and by furnishing to the OSC investigators copies of releasable documents requested under the authority of the Civil Service Reform Act of 1978, 5 CFR 1250, the Privacy Act, and Civil Service Rule V.

(e) Close coordination between DoD and OSC personnel during an OSC investigation is encouraged to eliminate duplication of effort, and to avoid unnecessary delay in initiating, when appropriate, corrective or disciplinary action. This coordination shall be conducted in full recognition of the independent statutory basis for the OSC, as provided in Pub. L. 95-454 and of the responsibilities of the Department of Defense.

(f) OSC investigative requests involving classified information shall be accorded special attention and prompt consideration under existing administrative procedures.

(g) When OSC and a DoD Component or an employee assigned DoD counsel are engaged in litigation, release of information shall be accomplished pursuant to MSPB rules of discovery (5 CFR 1201, subpart B.).

§ 145.5 Responsibilities.

(a) The *Secretaries of the Military Departments* and the *Director, Defense Logistics Agency (DLA)*, shall prescribe implementing documents to ensure that:

(1) The policies, standards, and procedures set forth in this part are administered in a manner that encourages consistency in responding to investigations of alleged prohibited personnel practices.

(2) Alleged illegal or improper conduct referred to a Military Department

or the DLA by the OSC or by OSD is carefully investigated.

(3) There is full cooperation with the IG, DoD, and the General Counsel, Department of Defense (GC, DoD), including assignment of military and civilian attorneys to represent employees suspected or accused by the OSC of committing a prohibited personnel practice or an otherwise illegal or improper act.

(b) The *General Counsel, Department of Defense* (GC, DoD) shall provide overall legal guidance, whether by the issuance of regulations or otherwise, on all issues concerning cooperation with the OSC. This authority extends to:

(1) Ensuring that DoD legal counsel is assigned upon request to represent a DoD employee suspected or accused by the OSC of committing a prohibited personnel practice or an illegal or improper act when the act complained of was within the scope of the employee's official responsibilities and such representation is in the interest of the Department of Defense; or, in unusual situations, that outside legal counsel is engaged where the use of DoD counsel would be inappropriate, and the same conditions are satisfied.

(2) Providing DoD legal counsel to seek intervention for the purpose of representing the interests of OSD or a Defense agency (other than the DLA) in an MSPB hearing resulting from charges of misconduct against an employee of OSD or a Defense agency, under the authority of the Civil Service Reform Act of 1978.

(3) Seeking the assistance of the Department of Justice in responding to requests by employees for legal representation in obtaining judicial review of an order by the MSPB, under 5 U.S.C. 1207.

(4) Modifying §145.3 and Appendix to this part and issuing supplementary instructions concerning all aspects of DoD cooperation with the OSC, including instructions on OSC investigations of allegedly arbitrary and capricious withholding of information under the Freedom of Information Act or violations of the Hatch Act.

(5) Reviewing for adequacy and legal sufficiency with the IG, DoD, each report of an investigation that must be personally reviewed by the Secretary

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or Deputy Secretary of Defense on action taken or to be taken in response to an OSC finding of reasonable cause to believe there has been a violation of law, rule, or regulation, not including a prohibited personnel practice or allegation referred to the Attorney General of the United States for appropriate action.

(c) The *Inspector General, Department of Defense* (IG, DoD) shall:

(1) Investigate, or cause to be investigated, as appropriate, any complaint referred to the Department of Defense by OSC.

(2) Coordinate, where feasible, investigative efforts by DoD Components and the OSC, with particular emphasis on those conducted or initiated by action of the OSC.

(3) Submit the results of any investigation conducted under this part to the appropriate General Counsel.

(d) The *Deputy Assistant Secretary of Defense (Administration)* (DASD(A)) shall serve as the Senior Management Official, as described in §145.6(b) concerning allegations by the OSC of prohibited personnel practices or other illegal or improper acts in the OSD.

(e) The *General Counsels of the Military Departments* and the *General Counsel of the Defense Logistics Agency* shall have the same authority for their respective Components as given to the General Counsel, DoD, under paragraphs (b) (1) and (2) of this section.

§ 145.6 Procedures.

(a) *Allegations of improper or illegal conduct received from the OSC under 5 U.S.C. 1206(b)(2), (3), or (c)(3).* (1) Allegations of improper or illegal conduct referred by the OSC to the Secretary of Defense or to a Defense agency (other than the DLA) shall be forwarded to the IG, DoD.

(2) Allegations of improper or illegal conduct referred to a Military Department or to the DLA by the OSC shall be forwarded to the General Counsel of that Component.

(3) Upon receipt of a referral under paragraph (a) (1) or (2) of this section IG, DoD, or the GC of the Component concerned, as appropriate, shall ensure compliance with the Civil Service Reform Act of 1978 by obtaining a suitable investigation of an allegation, includ-

ing compliance with time limits for reporting results of the investigation and personal review of the report by the head of the Component when required.

(4) Copies of each allegation referred under paragraph (a)(2) shall be forwarded by the General Counsel concerned to the IG, DoD.

(b) *OSC Investigations of Prohibited Personnel Practices.* (1) The head of each DoD Component shall designate a Senior Management Official to:

(i) Serve as a point of contact in providing assistance to the OSC in conducting investigations of alleged prohibited activities before any designation of an attorney of record for the Component or individual respondent for matters in litigation.

(ii) Monitor those investigations.

(iii) Ensure that appropriate Component personnel are fully apprised of the nature and basis for an OSC investigation, as well as the rights and duties of Component personnel in regard to such investigations.

(iv) Ensure that any corrective or disciplinary action considered appropriate because of facts disclosed by such an investigation is accomplished under paragraph (b)(2), in a timely manner.

(2) The designated Senior Management Official shall have authority to:

(i) Refer to responsible officials recommendations by the OSC for corrective action.

(ii) Seek OSC approval of proposed disciplinary action against an employee for an alleged prohibited personnel practice or illegal or improper act under investigation by the OSC when it is determined that such discipline is warranted.

(iii) Ensure that disciplinary action against an employee adjudged at fault following completion of an OSC investigation has been considered to avoid the need for a proceeding before the MSPB.

(iv) Ensure that information concerning members of the Armed Forces who are found by the Component to have committed a prohibited personnel practice or other violation of this Directive in the exercise of authority over civilian personnel is referred to appropriate military authority.